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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA**

UNITED STATES OF AMERICA for the use of
NORTH STAR TERMINAL & STEVEDORE
COMPANY, d/b/a Northern Stevedoring &
Handling, and NORTH STAR TERMINAL &
STEVEDORE COMPANY, d/b/a Northern
Stevedoring & Handling, on its own behalf,

Plaintiffs,
and

UNITED STATES OF AMERICA for the use of
SHORESIDE PETROLEUM, INC., d/b/a Marathon
Fuel Services, and SHORESIDE PETROLEUM,
INC., d/b/a Marathon Fuel Services, on its own
behalf,

Intervening Plaintiffs,
and

METCO, INC.,

Intervening Plaintiff,
vs.

NUGGET CONSTRUCTION, INC.; SPENCER
ROCK PRODUCTS, INC.; UNITED STATES
FIDELITY AND GUARANTY COMPANY; and
ROBERT A. LAPORE,

Defendants.

Case No. 3:98-cv-009-HRH

**NORTH STAR'S JOINDER IN
SHORESIDE AND METCO'S
MOTIONS FOR SUMMARY
JUDGMENT AND
DETERMINATIONS OF LAW
REGARDING NUGGET
CONSTRUCTION**

North Star's Joinder in Shoreside and Metco's
Motions for Summary Judgment and Determinations
of Law Regarding Nugget Construction

North Star Terminal & Stevedore Co., et al v. Nugget Construction et al

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Plaintiff and Use Plaintiff North Star Terminal & Stevedore Company (“North Star”) hereby joins in Shoreside’s and Metco’s Motion for Summary Judgment and Determination of Law Regarding Nugget Construction filed herein at Clerk’s Docket Nos. 508 and 514. The grounds for that motion also apply to North Star.

Among other things, North Star has long taken the position that, whereas Robert LaPore and Spencer Rock Products made the initial arrangements with North Star to do the work that North Star did in relation to the project, Nugget Construction stepped into Spencer’s shoes, including taking command of the work instead of Spencer and giving other pertinent directions. Nugget created a direct, binding relationship between it and North Star by word, conduct, and action.

In correspondence dated September 19, 1997 to Nugget’s legal counsel and copied to USF&G, North Star’s attorney specified that, in addition to Spencer Rock Products being a subcontractor, North Star believed that it had a direct relationship with Nugget. *See Exhibit 1 attached hereto.* That allegation was repeated in North Star’s initial Complaint filed on or about January 16, 1998 in this matter (*see Clerk’s Docket No. 1*) and has been repeated since then in numerous filings with the court in this case.

It has been repeated most recently in deposition testimony of North Star President Jeff Bentz and of Jack Goodwill, North Star’s operations manager on site in Seward, Alaska when the work was done. *See J. Bentz November 21, 2005 deposition transcript,* at transcript pp. 132-143, 151-152, 166, attached hereto as Exhibit 1, including:

North Star’s Joinder in Shoreside and Metco’s Motions for Summary Judgment and Determinations of Law Regarding Nugget Construction

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Ms. Ho, they [Nugget] stepped into the shoes of the client that we were supposed to be working for and they directed us to do the work. They then collected the money, intercepted the money that never got paid to the person that we were supposed to work for so that we could get our money.

Id. at tr. p. 143, ll. 2-8. *See* J. Goodwill March 16, 2006 deposition transcript at tr. p. 45, l. 22 – p. 46, l. 11, and tr. p. 55 ll. 1-2, 7-10, attached as Exhibit 2, as follows:

Q: Who did you understand your contract to be with for loading of the barge in 1997 while the work was being performed? THE WITNESS: I always thought it was Spencer and Nugget. Q: Why would you think it was Nugget? A: Because they were the ones that were directing everything. They were the ones that told us when to load the barge, how much on the barge, what type of rock on the barge, when to expect the barge back. Randy was the—was the guy in charge. He told me how he wanted the invoices done. I mean, he was—he didn't let one thing go by him * * * Q: And if you believe you were working for Nugget, why did you ask Mr. LaPore for payment on your invoices? A: That's where Randy told me to send the bill to.

See also J. Bentz March 28, 2006 deposition transcript at tr. p. 11, ll. 3-10, attached as Exhibit 3, as follows:¹

A: Well, we feel we had agreements with Nugget, but obviously that's why we are here. So if not on our assumption with our having contracts with Nugget, then interference with the contracts we had in place with Spencer. Q: And if you think there was a contract with Nugget, what were the terms of that agreement? A: No different than that of Spencer.

¹ Although this deposition was marked confidential, the short excerpt attached as Exhibit 3 contains no confidential information and need not be sealed.

North Star, like Shoreside and Metco, also relied upon this being a federally bonded project and firmly believed they would be paid as a result. *See Exhibit 1 at tr. pp. 79, 151-152; Exhibit 2 at tr. pp. 57, l. 23 – 59, l. 9. See also 12/7/98 Affidavit of Jack Goodwill at p. 5 ¶ 9, filed herein on or about that date at Clerk's Docket Nos. 69 & 75.*

Respectfully submitted at Anchorage, Alaska, on May 9, 2006.

s/ Michael W. Sewright
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CERTIFICATE OF SERVICE

I certify that on the 9th day of May, 2006, a copy of the foregoing NORTH STAR'S JOINDER IN SHORESIDE AND METCO'S MOTIONS FOR SUMMARY JUDGMENT AND DETERMINATIONS OF LAW REGARDING NUGGET CONSTRUCTION was served electronically to:

Steven S. Shamburek, Esq.
Traeger Machetanz, Esq.
Paul D. Stockler
Herbert A. Viergutz
C. Patrick Stoll, Esq.

s/ Michael W. Sewright